

PSJ1 Exh 24

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION)	MDL No. 2804
OPIATE LITIGATION)	
)	Case No. 1:17-md-2804
THIS DOCUMENT RELATES TO:)	
<i>Track Three Cases</i>)	Judge Dan A. Polster
)	

**GIANT EAGLE INC.’S ANSWERS AND OBJECTIONS
TO TOPIC NOS. 3-9 IN PLAINTIFFS’ NOTICE OF DEPOSITION
PURSUANT TO RULE 30(B)(6) TO DEFENDANT GIANT EAGLE**

Pursuant to Federal Rule of Civil Procedure 26, 30, and 34, Defendant Giant Eagle, Inc. (“Giant Eagle”) serves these Responses and Objections to Notice of Deposition Pursuant to Rule 30(b)(6) and Document Request Pursuant to Rule 30(b)(2) and Rule 34.

RESERVATION OF RIGHTS

1. Giant Eagle’s investigation and discovery are ongoing as to all matters referred to in these Responses and Objections to Notice of Deposition. Giant Eagle reserves the right to modify and supplement its Responses and Objections as appropriate. Giant Eagle specifically reserves the right to modify these Responses and Objections should Judge Polster conclude that the distribution of Schedule III opioids that were later reclassified as Schedule II opioids is not relevant to the Track Three Cases. *See infra*.

2. These Responses and Objections are made without in any way waiving or intending to waive (i) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of information or documents provided or produced in response to the Notice of Deposition Pursuant to Rule 30(b)(6) and Document Request Pursuant to Rule 30(b)(2) and Rule 34 (the “Notice”); (ii) the right to object on any ground to the use of the information or documents produced in response to the Notice at any hearings or at trial; (iii) the right to object

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III. ANSWERS AND INDIVIDUAL OBJECTIONS TO TOPIC NOS. 3-9 IN PLAINTIFFS’ SUBJECT MATTERS FOR TESTIMONY

3. In lieu of a written response to General Topic No. 10, offer to provide in writing performance metrics in place at Giant Eagle to evaluate pharmacist performance and compensation with respect to dispensing, including, but not limited to, pharmacy performance metrics to the extent they are considered as part of pharmacist performance and compensation throughout the relevant period. Written response will also include, for the relevant CII opioids and Cocktail drugs, the identification of methods Giant Eagle used to collect, record, and maintain data used in those performance metrics.

RESPONSE:

Giant Eagle incorporates its General Objections, Objections to Definitions and Instructions, and Objections to Relevant Time Period in their entirety into this response. Giant Eagle objects that this topic is overbroad and unduly burdensome due to its potentially technical nature and because it seeks information without reasonable temporal or geographic restrictions. Giant Eagle also objects that this topic implicates information and testimony completely unrelated to the dispensing or distribution of Schedule II Opioids and seeks a degree of specificity that is unduly burdensome and unreasonable. A party is not required to have its counsel muster all of the factual evidence to prepare an answer or witness’s testimony. Giant Eagle further objects that the terms “performance metrics,” “pharmacist performance,” “compensation,” “methods,” and “collect, record, and maintain data” are vague, ambiguous, and lacking reasonable particularity. Giant Eagle also objects to the extent that this topic is repetitive of issues about which Giant Eagle testified in its Track One 30(b)(6) deposition. Pursuant to the Track Three Case Management Order (Dkt. No. 3329), “30(b)(6) depositions may not be repetitive of 30(b)(6) (or the equivalent) depositions of Defendants taken in other MDL or New York opioid litigation.” Giant Eagle will not prepare a 30(b)(6) witness or answer regarding policies, procedures, materials, practices, or other issues that are repetitive of Giant Eagle’s 30(b)(6) deposition in Track One. Giant Eagle states that it interprets this request to seek a non-technical answer. Giant Eagle further objects that

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this Subject, contained within a Notice titled “CT3 Document 30(b)(6) Notice,” is outside the scope of “Document” Subjects permitted by the Track Three Case Management Order. That Order allows for one 30(b)(6) deposition “regarding document production” and one 30(b)(6) deposition “regarding other topics.” Plaintiffs separately noticed a 30(b)(6) deposition on topics unrelated to Giant Eagle’s document production in its “CT3 General 30(b)(6) Notice.”

Subject to and without waiving the foregoing objections, Giant Eagle answers that, during the Subject Period, it had no performance metrics that evaluated individual pharmacists’ performance and compensation with respect to dispensing that were considered as part of pharmacist performance and compensation during the relevant period. While Annual Performance Reviews included goals to generally “Increase Profitability,” “Increase Sales,” and “Increase Script Volume,” (or some combination thereof) those goals were assessed based on profitability, sales, and script volume for the entire pharmacy at which the pharmacist worked—they were not based on individual pharmacists’ performance. Those pharmacy performance metrics measured a pharmacy’s (1) profitability against a direct business line profitability budget target; (2) sales by comparing (i) sales budget, (ii) the number of prescriptions enrolled in medication synchronization and/or adherence programs and (iii) vaccinations against a (i) target sales budget, (ii) target number of prescriptions enrolled in a medication synchronization and/or adherence programs, and (iii) target vaccinations number; and (3) script volume by comparing actual overall script volume against a script volume budget. Throughout the Subject Period, Giant Eagle also used various operational metrics in different years. Those metrics included central fill utilization, time to fill, partial fill percentage targets, and inventory and shrink goals. In all years, these operational factors measured outcomes for the entire store—not individual pharmacists. All of these factors, when utilized, were considered among numerous other performance review factors wholly unrelated to

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dispensing. Further, each pharmacy's dispensing of Schedule II Opioids had a negligible impact on all of these metrics.

Similarly, during the Subject Period, Giant Eagle had performance metrics that evaluated pharmacy performance with respect to dispensing that were considered as part of each year's Pharmacy Bonus Program. Those metrics, and the manner in which they impacted pharmacist compensation during relevant years, are presented in the following documents:

TITLE	PRODUCTION ID
RX Bonus Plan 2012	HBC_MDL00191129
RX Bonus Plan 2013	HBC_MDL00191120
RX Bonus Plan 2014	HBC_MDL00191122
RX Bonus Plan 2015	HBC_MDL00191127
RX Bonus Plan 2016	HBC_MDL00191167
RX Bonus Plan 2017	HBC_MDL00191162
RX Bonus Plan 2018	HBC_MDL00191178
RX Bonus Plan 2019	HBC_MDL00191181
RX Bonus Plan 2020	HBC_MDL00191164

As with the aforementioned Annual Performance Review metrics, each pharmacy's dispensing of Schedule II Opioids had a negligible impact on the Pharmacy Bonus Program. All of the data for these metrics were drawn from dispensing data collected by pharmacist into Giant Eagle's dispensing software, which was copied to the Data Warehouse on a daily basis.

4. Plaintiffs will accept in writing the identification of dispensing data that is sold (or otherwise provided) by Giant Eagle to IQVIA, IMS, or other third party data vendors identified following a reasonable search, when such data was sold (or otherwise provided) and any geographic or store variables (i.e., whether Lake and Trumbull County stores differ from other Giant Eagle stores).

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FIELD NAME	GE SOURCE FIELD
FillDate	RX_TRANSACTION_DETAIL.SLS_DTE_TME
FillTime	RX_TRANSACTION_DETAIL.SLS_DTE_TME
TransactionNumber	RX_TRANSACTION_DETAIL.PDX_NO
QuantityDispensed	RX_TRANSACTION_DETAIL.QTY_DSPNSD **
DaysSupply	RX_TRANSACTION_DETAIL.SPLY_DAYS
RefillsAuthorized	RX_TRANSACTION_DETAIL.REFILLS_AUTHORIZE D
RefillsRemaining	RX_TRANSACTION_DETAIL.REFILLS_REMAINING
DueDate	RX_TRANSACTION_DETAIL.SLS_DTE_TME + RX_TRANSACTION_DETAIL.SPLY_DAYS
PatientHash	
SoldDate	RETAIL_PHARMACY_TX.TX_DTE_TME
PartialFillCode	RX_TRANSACTION_DETAIL.PARTIAL_FILL_CD
PartialFillLinkId	RX_TRANSACTION_DETAIL.RX_NO RX_TRANSACTION_DETAIL.REFILL_NO
IsCentralFill	RX_TRANSACTION_DETAIL.CNTL_FILL_FG
CentralFillNPI	
AutoFill	RX_TRANSACTION_DETAIL.ROT_FG
AutoFillDueDate	RX_TRANSACTION_DETAIL.SLS_DTE_TME + RX_TRANSACTION_DETAIL.SPLY_DAYS - 5
Is340BFill	"N"

Dated: February 22, 2021

Respectfully submitted,

/s/ Joshua A. Kobrin

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Counsel for Defendant Giant Eagle, Inc.

CERTIFICATE OF SERVICE

I certify that on February 22, 2021, the foregoing was served via e-mail to the following:

mdl2804discovery@motleyrice.com

ext-track3defendants@groups.jonesday.com

/s/ Joshua A. Kobrin
Joshua A. Kobrin, Esq.